

OSTER
Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040

0100187006

April 18, 1994

• • **18773**
RECORDATION NO. _____ FILED 1425

APR 18 1994 - 10 15 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Railroad Equipment Lease Agreement dated 3/30/94
between the following parties:

Lessor: Caterpillar Financial Services Corporation
3322 West End Avenue
Nashville, TN 37203

Lessee: MK Rail Corporation
720 Park Boulevard
Boise, Idaho 83729

The equipment involved in this transaction includes 2, MK1200G
Locomotives, #1200 and #1201.

Please file this agreement as a primary document. The filing fee
of \$18 is enclosed.

Thank you for your assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

RECEIVED APR 19 1994

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APR 19 1994
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Researching Services

Interstate Commerce Commission

Washington, D.C. 20423

4/18/94

OFFICE OF THE SECRETARY

**Mary Ann Oster
Research Consultant
Oster Researching Services
12897 Colonial Dr.
Mt Airy Maryland 21771**

Dear Mrs. Oster:

The enclosed document(s) was recorded pursuant to the provisions
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,

on **4/18/94** at **9:45am**, and assigned
recordation number(s). **18772 & 18773**

Sincerely yours,

**Secretary
SIDNEY L. STRICKLAND, JR.**

Enclosure(s)

ACKNOWLEDGMENT

State of Tennessee)
County of Davidson)

On this 30th day of March, 1994, before me
Donna M. Barkley, a Notary
Public in and for said County of Davidson, residing therein
and duly commissioned and sworn, personally appeared
John P. Herbots, known to me to
be the Executive Vice President of
MK Rail Corporation of Boise, Idaho
the corporation that executed the within instrument,
and known to me to be the person who executed the within instrument on behalf of said
corporation, and acknowledged to me that such corporation executed same.

In Witness Whereof, I hereunder subscribe my name and affix my official seal in my office
in said County of Davidson on the day and year first above
written.


Notary Public

(Seal)

My commission expires: March 23, 19 96.

ACKNOWLEDGMENT

State of Tennessee)
)
County of Davidson)

On this 30th day of March, 1994, before me
Donna M. Barkley, a Notary
Public in and for said County of Davidson, residing therein
and duly commissioned and sworn, personally appeared _____
F.L. McPheeters, known to me to
be the Executive Vice President of _____
Caterpillar Financial Services Corporation of Nashville
Tennessee, the corporation that executed the within instrument,
and known to me to be the person who executed the within instrument on behalf of said
corporation, and acknowledged to me that such corporation executed same.

In Witness Whereof, I hereunder subscribe my name and affix my official seal in my office
in said County of Davidson on the day and year first above
written.


Notary Public

(Seal)

My commission expires: March 23, 1996.

REGISTRATION NO. 18773 FILED 1425
APR 18 1994 - 9 10 AM
INTERSTATE COMMERCE COMMISSION

Railroad Equipment Lease Agreement

This Railroad Equipment Lease Agreement is entered as of the 30th day of March, 1994, by and between:

Caterpillar Financial Services Corporation
3322 West End Avenue
Nashville, Tennessee 37203-0990
(the "Lessor")

and

MK Rail Corporation
720 Park Boulevard
Boise, Idaho 83729
(the "Lessee")

Whereas, the Lessee has manufactured two (2) Model MK1200G Locomotives (collectively the locomotives are referred to as the "Equipment" and individually each locomotive is referred to as an "item of Equipment" or "Item").

Whereas, the Lessee desires to lease the Equipment as the lease payments and for the terms and upon the conditions set forth herein and any schedules or amendments hereto; and

Whereas, the Lessee intends to sublease the Equipment to certain customers of the Lessee (the "Sublessees"). Such Sublease (the "Sublease") shall be substantially in the form of Exhibit A attached hereto, which Lessor will consent to, provided the conditions set forth in Section 18 hereof are satisfied by the Lessee and each Sublessee.

Now, Therefore, in consideration of the promises and of the lease payments to be paid and the covenants to be kept and performed by the Lessee hereunder, the Lessor agrees to acquire and lease to the Lessee, and the Lessee agrees to hire from the Lessor, subject to the following terms and conditions, the Equipment.

Section 1. Delivery and Acceptance of Equipment.

1.1. **Delivery and Acceptance.** On March 30, 1994, Lessor shall purchase the Equipment from Lessee. On that date, Lessee shall deliver to Lessor a true and correct copy of a Bill of Sale in the form of Exhibit B attached hereto and made a part hereof, conveying title of the Equipment to the Lessor. In exchange therefor, on March 31, 1994, the Lessor shall deliver to the Lessee, by wire transferred funds to an account designated in writing by Lessee, the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000.00). On March 31, 1994, Lessee shall deliver to Lessor, a true and correct copy of a Delivery Supplement in the form attached hereto and made a part hereof, marked Exhibit C.

1.2. Lessee's and Lessor's Purchase Obligation. The obligation of the Lessor to purchase and pay for any Item of Equipment to be leased hereunder is subject to the conditions that no Event of Default (as hereinafter defined) or any event which, with notice or lapse of time or both, would become an Event of Default, are existing as of March 30, 1994. If any of the foregoing conditions, in the reasonable opinion of the Lessor, are not satisfied, the Lessee shall, in a timely manner upon the request of the Lessor, discharge any obligation to pay for the Equipment which the Lessor may have incurred under this Agreement.

Section 2. Representations and Warranties.

2.1. Representations and Warranties of the Lessee. The Lessee, with the knowledge that the Lessor is relying thereon, represents and warrants to the Lessor that (a) the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Delaware; (b) the Lessee has the power to make, deliver and perform under this Lease and all instruments and documents contemplated by this Lease; (c) the Lessee has taken all necessary and appropriate action to authorize the execution, delivery and performance of this Lease and all instruments and documents contemplated by this Lease; (d) the person or persons executing and delivering this Lease and all instruments and documents contemplated by the Lease are authorized to do so on behalf of the Lessee; (e) this Lease constitutes a valid obligation of the Lessee, legally binding upon it and enforceable in accordance with its terms; (f) the execution, delivery and performance of this Lease and all instruments and documents contemplated by this Lease do not and will not require any consent or approval which has not been obtained; and (g) the execution and delivery by the Lessee of this Lease and all instruments and documents contemplated by this Lease does not and will not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation of imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee. At the request of the Lessor, the Lessee shall provide a certificate, substantially in the form of Exhibit D hereto, as to the foregoing representations and warranties.

2.2. Representations and Warranties of the Lessor. The Lessor, with knowledge that the Lessee is relying thereon, represents and warrants the (a) Lessor is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Delaware; (b) Lessor has the power to make and perform under this Lease including any subleases; (c) Lessor has taken all necessary and appropriate action to authorize the execution, delivery and performance of this Lease and all instruments and documents contemplated by this Lease; (d) the person's executing this Lease and all instruments and documents contemplated by this Lease are authorized to do so on behalf of Lessor; (e) this Lease constitutes a valid obligation of the Lessor, legally binding upon it and enforceable in accordance with its term; (f) the execution, delivery and performance of this Lease and all documents and instruments contemplated by this Lease do not and will not require any consent or approval, which has not been obtained; and (g) the execution and delivery by the Lessor of this Lease

and all documents and instruments contemplated by this Lease do not and will not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessor, or any indenture, agreement or other instrument to which Lessor is a party or by which it, or any of its property, is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessor.

Section 3. Term.

The term of this Lease as to each Item of Equipment shall commence on March 30, 1994 (the "Lease Commencement Date"). The Lease shall remain in effect as to each Item of Equipment for a term of two hundred forty (240) months following the Lease Commencement Date.

Section 4. Lease Payment and Payment Dates.

4.1. Lease Payments for Equipment. Lessee agrees to pay the Lessor for each Item of Equipment leased hereunder Eight Thousand One Hundred Seventeen dollars (\$8,117.00) per month, in arrears.

The Lessee shall also pay to the Lessor, on demand, the lower of the interest at the rate of Chase Manhattan Bank prime, or the highest rate allowed under applicable law on the amount of any lease payment or other payment not made when due under the Lease, commencing to accrue as of the payment due date and continuing to accrue until payment in full of such amount or amounts is received by the Lessor.

4.2. Lease Payment Dates. The lease payments provided for in Section 4.1 hereof shall commence on the date which is one month from the Lease Commencement Date and continue on the same day of each month thereafter for the entire term of the Lease (for a total of 240 payments).

If any of the lease payment dates referred to is not a business day the lease payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Tennessee or Idaho are authorized or obligated to remain closed.

4.3. Place of Lease Payment. All payments provided for in this Lease shall be made to the Lessor, by company check or wire transfer of federal funds, at its address set forth in Section 23 hereof, or at such other place and in such other manner as the Lessor or its assigns shall specify in writing.

4.4 Net Lease. This Lease is a net lease and the Lessee's obligation to pay all lease payments and other amounts which become due hereunder shall be absolute and unconditional, and the Lessee shall not be entitled to any abatement of lease payment or reduction thereof, including, but not limited to, abatements or reductions due or alleged to be due by reason of any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any Sublessee; nor, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any Item of Equipment from whatsoever cause, the taking or requisitioning of the Equipment or any Item of Equipment by condemnation or otherwise, the attachment of any lien, encumbrance, security interest or other claim of any third party to any Item of Equipment, the prohibition of the Lessee's use of the equipment, the failure or inability of or any Sublessee to make any required payments to the Lessee, the interference with such use by any private person or corporation, the invalidity of or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into Lease, the insolvency of or the commencement by or against the Lessee of any bankruptcy, reorganization or similar proceeding, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payable by the Lessee hereunder shall continue to be payable in all events except and to the extent that such abatement or reduction arises out of or is caused by Lessor's breach of its obligations pursuant to this Lease.

Section 5. Title to the Equipment.

5.1 Retention of Title. The Lessor is acquiring full legal title to the Equipment, and it is understood that the Lessee, any Sublessee and any other permitted assigns of Lessee shall acquire no right, title and interest to the Equipment, other than as specifically set forth in this Lease, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee, any Sublessee and any other permitted assigns of Lessee.

5.2 Duty to Number and Mark Equipment. The Lessee shall cause each Item of Equipment to be kept numbered with its road number, as set forth in Schedule A hereto, and shall keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height, as follows:

"Subject to a security agreement on file with the Interstate Commerce Commission."

Appropriate changes thereof and additions thereto shall be made by the Lessee as may from time to time be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 18 thereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will promptly replace any such names and word or words which may be removed, defaced or destroyed. The Lease will not change the road number of any Item of Equipment, except with the advance, written consent of the

Lessor, and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed, recorded and deposited in all public offices where this Lease shall have been filed, recorded and deposited, as to which the Lessee shall have furnished to the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Lessor's interests in such Item of Equipment, and no filing, recording, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Equipment.

5.3 Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any Sublessee on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee or such Sublessee to use the Equipment under this lease, but not as a designation that might be interpreted as a claim of ownership.

Section 6. Disclaimer of Warranties.

THE LESSEE ACKNOWLEDGES AND AGREES THAT (a) EACH ITEM OF EQUIPMENT IS OF A SIZE, DESIGN AND MANUFACTURE SELECTED BY THE LESSEE AFTER DUE CONSIDERATION BY THE LESSEE OF THE PURPOSES AND USES INTENDED BY THE LESSEE FOR EACH SUCH ITEM OF EQUIPMENT, (b) EACH ITEM OF EQUIPMENT IS SUITABLE FOR THE LESSEE'S PURPOSES AND APPLICATIONS AND CONTAINS ALL SAFETY FEATURES DEEMED NECESSARY BY THE LESSEE, (c) THE LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT, (d) THE MANUFACTURER IS NOT AN AGENT OF THE LESSOR, AND (e) THE LESSOR HAS NOT MADE, DOES NOT HEREBY MAKE, AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE TITLE, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, DESCRIPTION, DURABILITY OR SUITABILITY OF ANY SUCH ITEM OF EQUIPMENT OR THE MATERIALS OR WORKMANSHIP THEREIN IN ANY RESPECT OR IN CONNECTION WITH THE PURPOSES AND USES OF THE LESSEE, OR WITH RESPECT TO THE APPROPRIATE CHARACTERIZATION OF THIS TRANSACTION BY THE LESSEE FOR FINANCIAL OR TAX REPORTING OR FOR ANY OTHER PURPOSES, IT BEING AGREED THAT AS BETWEEN THE LESSOR AND THE LESSEE, ALL SUCH RISKS ARE TO BE BORNE BY THE LESSEE. So long as no Event of Default has occurred and is continuing, the Lessor shall be deemed to have assigned to the Lessee, to the extent assignable, any warranties of the Lessee with respect to any Item of Equipment. Any action taken by the Lessee to assert and enforce any such warranties shall be at the Lessee's sole cost and expense and the Lessee shall indemnify and hold harmless the Lessor from and against any cost, expense, or liability, including reasonable attorney's fees, the Lessor may incur as a result of the Lessee's assertion of any such warranty claims.

Section 7. Lessee's Indemnity.

7.1. Scope of Waiver and Indemnity. THE LESSEE HEREBY RELEASES ANY CLAIM NOW OR HEREAFTER EXISTING AGAINST THE LESSOR ON ACCOUNT OF, AND SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE LESSOR AND THE DIRECTORS, OFFICERS, EMPLOYEES, SUCCESSORS AND ASSIGNS OF THE LESSOR FROM AND AGAINST:

(a) ANY AND ALL LOSS OR DAMAGE OF OR TO ANY ITEM OF EQUIPMENT, AND
(b) ANY CLAIM OR CAUSE OF ACTION OF THE LESSEE OR ANY THIRD PARTY, ALL DAMAGES, LIABILITY, LOSSES, DEMANDS, SUITS, JUDGMENTS, COST OR EXPENSE (INCLUDING COUNSEL FEES AND COSTS IN CONNECTION THEREWITH) WHICH MAY BE INCURRED IN ANY MANNER BY OR FOR THE ACCOUNT OF ANY OF THEM, (i) RELATING TO THE EQUIPMENT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, OWNERSHIP, LEASING, USE, MAINTENANCE, REPAIR, REPLACEMENT OR RETURN OF THE EQUIPMENT, (ii) BY REASON OR AS THE RESULT OF ANY ACT OR OMISSION OF THE LESSEE FOR ITSELF OR AS AGENT FOR THE LESSOR HEREUNDER, (iii) WHICH MAY BE ATTRIBUTABLE TO ANY DEFECT (WHETHER LATENT OR PATENT) IN ANY ITEM OF EQUIPMENT ARISING FROM THE MATERIAL USED THEREIN OR FROM THE DESIGN, MANUFACTURE OR TESTING THEREOF, OR FROM ANY USE, MAINTENANCE, SERVICE, REPAIR OR TESTING OF ANY ITEM OF EQUIPMENT, REGARDLESS OF WHEN SUCH DEFECT SHALL BE DISCOVERED. WHETHER OR NOT SUCH ITEM OF EQUIPMENT IS IN THE POSSESSION OF THE LESSEE AND REGARDLESS OF THE LOCATION OF SUCH ITEM OF EQUIPMENT, (iv) RESULTING FROM ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL DAMAGES, OR (v) AS A RESULT OF CLAIMS FOR NEGLIGENCE AGAINST LESSEE, OR STRICT LIABILITY IN TORT, EXCEPT THAT NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS REQUIRING LESSEE TO INDEMNIFY LESSOR FOR ANY SUCH CLAIMS ARISING OUT OF LESSOR'S BREACH OF COVENANTS, TO BE PERFORMED BY LESSOR UNDER THIS LEASE.

7.2. Federal Income Taxes. The Lessor, as the owner of the Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1986, as amended to the date hereof (hereafter called the Code), to an owner of property, including, without limitation, depreciation deductions with respect to the Equipment, in accordance with Section 168(a) of the Code, Based upon the applicable depreciation method and recovery period specified in Section 168(b) and (c) of the Code (as indicated below) and, for state income tax purposes, all analogous deductions, with respect to the Equipment.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any return or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee acknowledges that the lease payment rate provided herein has been calculated on the basis of depreciation deductions using an estimated useful life for this Equipment of seven (7) years, ADR Code 40.1, and using a mid-year convention in accordance with Section 168(c) of the Code.

7.3. Payment of Fees and Taxes. The Lessee shall report, pay and discharge when due, and indemnify and hold harmless the Lessor from, all license and registration fees, assessments, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing of any nature whatsoever (excluding, however, any tax measured by the Lessor's net income) together with any penalties, fines, additions to tax, or interest thereon, imposed by any state, federal or local government upon any Item of Equipment and whether or not the same shall be assessed against or in the name of the Lessor or the Lessee: provided, however, that the Lessee shall not be

required to pay or discharge any such tax or assessment resulting from Lessor's misrepresentation, act of omission or negligence. The Lessee shall reimburse the Lessor for any damages, costs or expenses incurred by Lessor resulting from failure to properly pay or discharge any such taxes, fees and assessments.

7.4 Continuation of Indemnities and Assumptions. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of the Lease.

Section 8. Loss or Damage; Waiver and Indemnity.

The Lessee shall bear the risk of any loss, damage or Casualty Occurrence (as hereinafter defined) to any Item of Equipment prior to, during subsequent to (until such Item is returned to the Lessor pursuant to Section 15 hereof) the term of this Lease as to such Item. If any Item of Equipment shall become damaged, from any cause whatsoever, the Lessee shall give the Lessor prompt notice thereof. A Casualty Occurrence shall mean that the cost to repair exceeds the Casualty Value less the net salvage value. In the absence of such an occurrence, then the Lessee shall, at its expense, promptly restore such Item to the condition required by Section 10 hereof. If any Item shall become worn-out, lost, stolen, destroyed or irreparably damaged (as reasonably determined by the Lessor in accordance with accepted standards and practices of the railroad industry), from any cause whatsoever, or taken by condemnation, under power of eminent domain for an indefinite period or definite period exceeding the term of this Lease, or otherwise (any such occurrence hereafter a "Casualty Occurrence") prior to, during or subsequent to (until such Item is returned to the Lessor pursuant to Section 15 hereof) during the term of this Lease as to such Item, the Lessee shall give the Lessor prompt notice thereof. On the first lease payment date following such Casualty Occurrence or, if such an occurrence occurs within fifteen (15) days of the next lease payment date, it will be paid on the next subsequent lease payment date, or, if there is no such lease payment date, thirty (30) days after such Casualty Occurrence, the Lessee shall pay to the Lessor any lease payment and other payment then due in respect to such Item, plus a sum equal to the Casualty of such Item as set forth in Exhibit E hereto. Upon the Lessor's receipt of such payment, the Lessor will convey good and marketable title to such Item of equipment to Lessee or designee of Lessee on an "as is", "where is" basis, without representation and warranty, express or implied, as to condition or such equipment, and the term of this Lease as to such Item shall terminate and the Lessee shall be entitled to possession of such Item.

Section 9. Rules, Laws and Regulations.

9.1. Duty to Comply. The Lessee agrees to comply and to require any sublessee to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation, the Interstate Commerce Commission and the American Association of Railroad) with respect to the use, maintenance and operation of each Item of Equipment. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee, at its sole cost and expense, shall make such changes, additions and replacements. Such equipment or appliance shall become a part of the Equipment and title thereto shall immediately vest in Lessor.

9.2 Reports by Lessor. The Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or regulatory authority by reason of the ownership by the Lessor of the Equipment or the leasing thereof to the Lessee.

Section 10. Use, Maintenance and Repairs of Equipment.

Lessee, at its own expense and at all times, shall maintain and service, or cause the Equipment to be maintained and serviced, (i) so as to keep the Equipment in as good operating order, repair condition and appearance as when first delivered, ordinary wear and tear from normal and proper use excepted, and (ii) in compliance with the original manufacturer's recommended preventative maintenance procedures and policies, and (iii) in accordance with applicable interchange regulations for such equipment set forth by the Association of American Railroads, Federal Railroad Administration, Department of Transportation or any successor entities having jurisdiction over such matters. Lessee hereby agrees to maintain all records, logs, reports, and compliance certificates relating to the Equipment and to make such records available to the Lessor upon request. The Lessee or any Sublessee shall not use, operate, maintain or store any Item improperly, carelessly or unsafely or for any purpose other than in the conduct of its business. In no event will Lessee cause any Item of Equipment to be maintained or scheduled for maintenance on a basis less frequent than the maintenance scheduling basis employed by the Lessee for similar Equipment.

Lessee shall not modify or allow to be modified, any Item of Equipment without the prior written consent and approval of Lessor except to the extent an addition to the Equipment may be required in order to bring such Equipment into compliance with applicable laws, regulations, requirements and rules (as described in Section 9.1 above). Any parts installed or replacements made by Lessee to any Equipment shall be considered accessions to such Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

Section 11. Liens on the Equipment.

Throughout the term of this Lease and during the period of any storage of the Equipment by the Lessee provided for herein, the Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors, assigns or sublessees which, if unpaid, might constitute or become a lien, encumbrance or charge upon the Equipment, and any liens, encumbrances or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not, in the reasonable opinion of the Lessor, affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 11 shall survive termination of this Lease.

Section 12. Filing of Lease.

12.1. Filing. The Lessee, at its own expense, will cause a memorandum of this Lease, and any sublease to be filed with Interstate Commerce Commission pursuant to 49 U.S.C. Para. 11303. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonable requested by Lessor for the purpose of proper protection of the Lessor's interests in the Equipment, or for the purpose of carrying out the intention of this Lease and any sublease. Lessee, if it so elects, will pay Lessor a service fee for \$500 for making such filings in addition to the cost of such filings.

Section 13. Insurance; Payment for Casualty Occurrence.

13.1.(a) Insurance. Subject to the provisions of Section 13.1(b), the Lessee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured in amounts and against risks, including but not limited to property insurance and public liability insurance with respect to third-party personal and property damage, customarily and prudently insured against by railroad companies on similar equipment, but in any event not less than Five Hundred Thousand Dollars (\$500,000) combined coverage per occurrence. All such insurance shall be in such form and with such companies as the Lessor shall approve, shall specify the Lessor (or its designee) and the Lessee as named insurers, shall be primary, without right of contribution from any other insurance carried by the Lessor, and shall provide that such insurance may not be canceled or altered so as to affect the interest of the Lessor without at least thirty (30) days prior written notice to the Lessor. All insurance covering loss or damage to the Equipment shall name the Lessor (or its designee) as loss payee and shall be payable solely to the Lessor. The Lessee shall not make adjustments with insurers except with the Lessor's prior written consent and hereby irrevocable appoints the Lessor as the Lessee's attorney in fact to receive payment of and endorse all checks, drafts and other documents and to take any other actions necessary to pursue insurance claims and recover payments if the Lessee fails to do so. The Lessee shall promptly notify the Lessor of any occurrence which may become the basis of a claim under any such insurance coverage and shall provide the Lessor with all requested pertinent data. The Lessee shall deliver to the Lessor, as soon as available, and in any event prior to the commencement date of the term of this Lease as to each Item of Equipment, evidence of such insurance coverage in form satisfactory to the Lessor.

13.1.(b) Lessor's Right to Insure. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option, upon five (5) business days prior written notice to the Lessee, provide such insurance, and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof with interest from the date of payment thereof, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in Section 4.1. hereof.

13.2 Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed or irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee, or shall be requisitioned or taken over by any

governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and full (after it has knowledge of such Casualty Occurrence) inform the Lessor in regard thereto and shall pay the Casualty Value (as herein defined) of such Item in accordance with the terms hereof.

13.3 Lease Payment Termination. Upon payment of the Casualty Value in respect of any Item of Equipment and all other sums due on such lease payment date, the obligation to pay lease payments on such Item of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay lease payments for all other Items of Equipment.

13.4. Risk of Loss. The Lessee shall bear the risk of loss of or damage to any Item of Equipment and, except as provided in this Section 13, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and the lease payments due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment have been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Items or the salvage thereof.

Section 14. Annual Reports

14.1. Duty of Lessee to Furnish On or before April 1 in each year, commencing with the year 1995, the Lessee will furnish to the Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding twelve (12) month and such other information regarding the condition or repair of the Equipment as the Lessor may reasonable request, (b) stating, as of the date of that statement, the location of each Item of Equipment, (c) stating the party, if any, to which any Item of Equipment may have been subleased during such period, (d) stating that, in the case of all Equipment, the markings required by Section 5.2 hereof shall have been preserved or replaced, and (e) describing the insurance coverage maintained by the Lessee during such period pursuant to Section 13.1(a) hereof.

14.2. Lessor's Inspection Rights. The Lessor and the agents of the Lessor shall have the right, at its sole cost, to inspect the Equipment and the Lessee's or any Sublessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

14.3. Financial Reports The Lessee shall keep its books and records in accordance with generally accepted accounting principles and practices and shall deliver to the Lessor not later than the date on which the report referred to in Section 14.1 is furnished to the Lessor, its annual audited financial statements and such other unaudited financial statements as may be

reasonably requested by the Lessor. The Lessee represents and warrants to the Lessor that all credit, financial and other information submitted to the Lessor in connection with this Lease is and shall be true, correct and complete.

Section 15. Return of Equipment Upon Expiration of Term.

Upon not less than thirty (30) days written notice prior to the termination or expiration of the term of this Lease with respect to any Item of Equipment, the Lessor will advise the Lessee of the return point on the Sublessee's lines or if no Sublessee, at the original place of delivery. The Lessee will, at its own risk, cost and expense, deliver possession of such Item of Equipment to the Lessor at such point more than thirty (30) days after termination or expiration of the term of this Lease and store the same at such point at Lessee's risk, cost and expense for a period not to exceed ninety (90) days. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Item, to inspect the same at their own expense and risk of personal injury or death. During any such storage period, the Lessee shall maintain the Items of Equipment in such manner as is customary in the Railroad industry for similar equipment in similar storage circumstances; provided, however, that the maintenance and condition of the Equipment shall at all times be not less than the level required by Section 10 hereof. The assembling, delivery, storage and transporting of the Equipment, as hereinbefore provided, are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, maintain, store and transport the Equipment.

Section 16. Default

16.1 Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the lease payment or other sums required to be paid hereunder by the Lessee and such default shall continue for fifteen (15) days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or Lessee shall permit possession of the Equipment by persons other than Lessee or authorized Sublessee; or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions, agreements and warranties on the part of the Lessee contained herein and such default shall continue for thirty (30) days; or

(d) Any representation or warranty of the Lessee contained herein or in any document furnished to the Lessor in connection with this Lease shall be incorrect as of the date when made; or

(e) A petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee, or any Sublessee (provided only if Lessee is in default); or

(f) Any other proceeding shall be commenced by or against the lessee or any Sublessee (provided only if Lessee is in default), for any relief which includes, or might result in, any modification of the obligations of the Lessee or any Sublessee whereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, re-adjustments of indebtedness, reorganizations, arrangements, compositions or extensions;

16.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor, at its option may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this or to recover damages for the breach thereof; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee or any Sublessee, to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and, thereupon, the Lessor may, by its agents, enter upon the premises of the Lessee or any Sublessee or other premises, insofar as the Lessor or Lessee or any Sublessee may be lawfully authorized to so permit, where any Item of Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee or its successors or assigns, to use the Equipment for any purpose whatever but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the lease payment for any number of days less than a full lease payment period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full lease payment period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify: (i) a sum, with respect to each Item of Equipment, which represents (x) the excess of the Casualty Value at the time of such termination over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Item of Equipment from the date of such termination until March 29, 2014. Such present value shall be computed on the basis of eight percent (8%) per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Item of Equipment is sold, the net proceeds of the sale, or (ii) an amount equal to the excess, if any, of the Casualty Value as of the termination date, or if the termination date is not a rental payment date, then the Casualty Value as of the immediately preceding rental payment date, over the amount the Lessor reasonably estimates to be the sales value of such Item of Equipment at such time; PROVIDED, HOWEVER, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (iii) with respect to such item of Equipment, may if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the

excess, if any, of the Casualty Value for such Item, as of the termination date, or if the termination date is not a rental payment date, then the Casualty Value as of the immediately preceding rental payment date, over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorney's fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

16.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. To the extent permitted by law, the Lessee hereby waives any mandatory requirements of law, now or hereafter in effect which might limit or modify any of the remedies herein provided. The Lessee hereby waives any and all existing or future claims of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with or related to the lease of the Equipment.

16.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

16.5. Notice of Event of Default. The Lessee also agrees to furnish the Lessor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes and Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 16.5., a "responsible officer" shall mean, with respect to the subject matter of any covenant agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

Section 17. Return of Equipment Upon Default; Disposition of Equipment.

17.1. Lessee's Duty to Return. If the Lessor shall terminate this Lease pursuant to Section 16 hereof, the Lessee shall forthwith deliver possession of Equipment to the Lessor in accordance with Section 15.

17.2. Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 17, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Item.

Section 18. Assignment by Lessor or Lessee.

All or any of the rights of the Lessor under this Lease and title to the Equipment may be assigned by the Lessor at any time without the consent of the Lessee or any of its permitted successors and assigns. If notified by the Lessor, Lessee shall make all payments due under this Lease to the party designated in such notice, without offset or deduction whatsoever, as provided in Section 4 hereof. An assignment of this Lease or any right or obligation hereunder may be made by the Lessee or any assignee of the Lessee with the prior written consent of the Lessor, and such consent shall not be unreasonable withheld. Upon such assignment by Lessee, consented to by Lessor, Lessee's obligations under this agreement shall be terminated. This Lease shall be binding upon and inure to the benefit of the Lessor and the Lessee and their respective successors and assigns.

Section 19. Right to Equipment; Merger, Consolidation of Lease.

19.1. Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 19.2. hereof.

19.2. Use and Possession. No sublease shall be entered into by the Lease, other than permitted in Section 2.1, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, and no sublease, including those permitted by Lessor, entered into by Lessee shall relieve the Lessee of any liability or obligations hereunder, which shall be and remain those of a principal and not a surety. Any sublease permitted by the Lessor shall be subject and subordinate to the rights and remedies of the Lessor under this Lease in respect of the Equipment covered by such sublease upon the occurrence of an Event of Default hereunder.

Section 20. Opinion of Lessee's Counsel.

On March 29, 1994 the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease has been duly authorized, executed and delivered by the Lessee and constitutes the valid, legal and binding agreement of the Lessee enforceable in accordance with its terms;

(d) No approval, consent of, or filing with, any public regulatory body is required with respect to the entering into or performance by the Lessee of this Lease;

(e) The execution and delivery by the Lessee of this Lease does not violate any provision of any law, any order of any court or government agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except upon the leasehold estate of the Lessee hereunder.

Section 21. Interest on Overdue Lease Payments, Other Payments and Amounts Paid by Lessor.

Anything to the contrary herein contained notwithstanding, any nonpayment of lease payments or other payments due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay an amount equal to Chase Manhattan prime (or the lawful rate, whichever is less) on such overdue lease payments, payments and amounts expended for the period of time during which they are overdue or expended and not repaid.

Section 22. Lease Termination Option.

22.1 Expirations of Lease Term. Upon the expiration of the original lease term, and provided the Lessee is not in default hereunder, Lessee shall have the following options:

(a) Return the Equipment pursuant to the terms of Section 15 of this Agreement;

(b) Extend the term of this Agreement on a month-to-month basis for a minimum of twelve (12) months at a payment amount mutually agreed upon by Lessor and Lessee; and,

(c) Purchase Option: Lessee may, by notice delivered to Lessor not less than one hundred eighty (180) days prior to the end of the term of the Lease with respect to any Item of Equipment, elect to purchase at the end of such term such Item of Equipment for a purchase price equal to the then "Fair Market Value" of such Item of Equipment. Fair Market Value shall be equal to the amount which would obtain in an arm's length transaction between an informed and willing buyer (other than a used equipment dealer or a buyer currently in possession) and an informed and willing seller under no compulsion to sell and, in the determination thereof, costs of removal from the current locations shall not be a deductions from such value. If, four months prior to the end of such term, Lessor and Lessee have not agreed upon the Fair Market Value of such Item of Equipment, upon application of either party an appraiser shall be appointed by the American Arbitration Association and instructed to determine the Fair Market Value of such Items of Equipment within thirty days after appointment and to promptly communicate such determination in writing to Lessor and Lessee.

The determination so made shall be conclusively binding upon Lessor and Lessee. The expenses and fees of the appraiser shall be paid by Lessee. Upon receipt of the purchase price, plus any taxes due in connection with the sale of the Item of Equipment, Lessor shall deliver to Lessee a bill of sale (without warranties except that such Item of Equipment is free of all encumbrances of any person claiming through Lessor) for such Item of Equipment.

Lessee shall give Lessor not less than one hundred eighty (180) days prior written notice of its election under Section 22.1 (a) or (b).

22.2 Early Termination. Upon not less than ninety (90) days prior written notice to Lessor, and provided Lessee is not in default hereunder, Lessee may elect to early terminate this Agreement with respect to any Item of Equipment. The purchase price shall be the Casualty Value of the Item of Equipment. The purchase price shall be the Casualty Value of the Item of Equipment as of the termination date, or if the termination date is not a rental payment date, then the Casualty Value of the Item of Equipment as of the immediately preceding rental payment date.

22.3. Payment; Bill of Sale. Payment of any purchase price set forth in Sections 22.1 and 22.3 above shall be made at the place of payment specified in Section 4 hereof in immediately available funds against delivery of a Bill of Sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to such Items of Equipment. Lessor shall not be required to make any representation or warranty as to the condition of each Item of Equipment or any other matters.

Section 23. Miscellaneous.

23.1 Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

If to the Lessor: Caterpillar Financial Services Corporation
3322 West End Avenue, Suite 610
Nashville, Tennessee 37203-0990
Attention: Treasurer

If to the Lessee: MK Rail Corporation
720 Park Boulevard
Boise, ID 83729
Attention: Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

23.2. Execution in Counterparts. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

23.3. Integration; Law Governing. This Lease contains the entire agreement of the Lessor and the Lessee and shall be governed, construed and enforced in accordance with the laws of Tennessee, provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

23.4. Lessor's Right to Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may, upon notice to the Lessee, itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount as provided in Section 4.1 hereof, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.


23.5. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceability such provision in any other jurisdiction.

23.6. Effect and Modification of Lease. The text of this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Equipment and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

In Witness Whereof, the authorized representatives of the Lessor and the Lessee have executed this Lease Agreement as of the 30th day of March, 1994.

MK RAIL CORPORATION
(LESSEE")

CATERPILLAR FINANCIAL SERVICES
CORPORATION ("LESSOR")

By: 
Title: Executive Vice President


By: 
Title: EXECUTIVE VICE PRESIDENT

Exhibit B

Bill of Sale

In consideration of the sum of two million four hundred thousand dollars \$2,400,000.00 the receipt of which is hereby acknowledged, MK Rail Corporation ("Seller") sells to Caterpillar Financial Services Corporation ("Buyer"), the property listed in Schedule 1 attached hereto (the "Property").

Seller covenants and warrants as of the date hereof that:

- (1) It is the owner of, and has absolute title to, the Property free and clear of all claims, liens and encumbrances.
- (2) It has not made any prior sale, assignment, or transfer of the Property.
- (3) It has the present right, power and authority to sell the Property to buyer.
- (4) All action has been taken which is required to make this Bill of sale a legal, valid and binding obligation of seller.

Seller shall, subject to such exceptions as are provided for in the Lease and Rider thereto both dated March 30, 1994 between Seller and Buyer, defend and indemnify the Buyer, its successors and assigns, against any person claiming an interest in the property. This Bill of Sale is binding on the successors and assigns of Seller and inures to the benefit of the successors and assigns of Buyer.

MK Rail Corporation

By: 

Date: March 30, 1994

Schedule 1 To Exhibit B

MK Rail Corporation
Locomotive Listing

<u>MK LOCOMOTIVE NUMBER</u>	<u>MODEL NUMBER</u>	<u>FRAME SERIAL NUMBER</u>	<u>SERIAL NUMBER</u>
1200	MK1200G	5487-5	22472
1201	MK1200G	5521-6	22057

Exhibit C

To: Caterpillar Financial Services Corporation
("Lessor")

I, a duly authorized representative of MK Rail Corporation ("Lessee") do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Lessee and under the Equipment Lease dated as of March 30, 1994 between the Lessor and the Lessee, of the following Items of Equipment ("Equipment")

Type of Equipment: MK1200G
Manufacturer: MK Rail Corporation
Place Accepted: MK Rail Corporation Boise, ID
Date Accepted: March 31, 1994
Number of Items: One of Two
Serial Number: 22057
Frame Serial Number: 5521-6
Locomotive Number: 1201

I do further certify that the foregoing Equipment appears to be in good order and condition and to conform to the specifications applicable thereto.

The execution of this Certificate will in no way relieve or decrease the responsibility of the manufacturer of the Equipment for warranties it has made with respect to the Equipment.

MK Rail Corporation

By: 

Title: Executive Vice President

Date: March 31, 1994

Exhibit C

To: Caterpillar Financial Services Corporation
("Lessor")

I, a duly authorized representative of MK Rail Corporation ("Lessee") do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Lessee and under the Equipment Lease dated as of March 30, 1994 between the Lessor and the Lessee, of the following Items of Equipment ("Equipment")

Type of Equipment: MK1200G
Manufacturer: MK Rail Corporation
Place Accepted: MK Rail Corporation Boise, ID
Date Accepted: March 31, 1944
Number of Items: One of Two
Serial Number: 22472
Frame Serial Number: 5487-5
Locomotive Number: 1200

I do further certify that the foregoing Equipment appears to be in good order and condition and to conform to the specifications applicable thereto.

The execution of this Certificate will in no way relieve or decrease the responsibility of the manufacturer of the Equipment for warranties it has made with respect to the Equipment.

MK Rail Corporation

By: 

Title: Executive Vice President

Date: March 31, 1994

MK RAIL CORPORATION

Morrison Knudsen Plaza
720 Park Boulevard
Boise, Idaho 83729
Phone (208) 386-5000
Fax (208) 386-5967

EXHIBIT D

Caterpillar Financial Services Corporation
3322 West End Avenue
Suite 610
Nashville, Tennessee 37203-0990

**Re: Railroad Lease Agreement between Caterpillar Financial Services Corporation
and MK Rail Corporation - 2 MK12006 Locomotives (the "Lease")**

Ladies and Gentlemen:


I, John E. Schone, Associate General Counsel of MK Rail Corporation, a Delaware corporation ("Lessee"), do hereby certify the following:

- 1. The Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Delaware.**
- 2. The Lessee has the power to make, deliver and perform under this Lease and all instruments and documents contemplated by this Lease.**
- 3. The Lessee has taken all necessary and appropriate action to authorize the execution, delivery and performance of the Lease and all instruments and documents contemplated by this Lease.**
- 4. John Herbots is authorized to execute and deliver this Lease and all instruments and documents contemplated by this Lease and is authorized to do so on behalf of the Lessee.**
- 5. This Lease constitutes a valid obligation of the Lessee, legally binding upon it and enforceable in accordance with its terms.**
- 6. The execution, delivery and performance of this Lease and all instruments and documents contemplated by this Lease do not and will not require any consent or approval which has not been obtained.**

MK RAIL CORPORATION

7. The execution and delivery by the Lessee of this Lease and all instruments and documents contemplated by this Lease does not and will not violate any provision of any law, any order of any court of governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Corporation in the City of Boise, County of Ada, State of Idaho, this 2nd day of March, 1994.


John E. Schone

(corporate seal)

Exhibit E to Schedule No. RR Lease to
Master Tax Lease
Dated March 30, 1994
Between Caterpillar Financial Services Corporation
And MK RAIL CORPORATION

CASUALTY VALUE

Description : LOCOMOTIVE MODEL: MK1200G
SERIAL NUMBER: 22057
SERIAL NUMBER: 22472

The Casualty Value of each Unit shall be an amount equal to the percentage of the total aggregate rents due under the lease set forth opposite the number of the rent payment due on the next rent payment date following the Casualty Occurrence. If the Casualty Occurrence takes place after the last rent payment date, the Casualty Value shall be an amount equal to the percentage of the total aggregate rent set forth opposite such last rental payment number.

No. of Rental Payment	Payment Due Date	% of Total Aggregate Rents (*)	No. of Rental Payment	Payment Due Date	% of Total Aggregate Rents (*)
1		67.274206	121		49.279174
2		67.259755	122		49.038145
3		67.243343	123		48.797687
4		67.227001	124		48.555786
5		67.205929	125		48.312412
6		67.182851	126		48.068971
7		67.159796	127		47.824066
8		67.131965	128		47.577669
9		67.102083	129		47.331184
10		67.072177	130		47.083215
11		67.037448	131		46.833732
12		67.000620	132		46.584141
13		66.963720	133		46.333044
14		66.918723	134		46.080493
15		66.869875	135		45.828436
16		66.820875	136		45.574856
17		66.765829	137		45.319814
18		66.707771	138		45.064627
19		66.649500	139		44.807897
20		66.585120	140		44.549684
21		66.517665	141		44.291304
22		66.449933	142		44.031359
23		66.376027	143		43.769908
24		66.298982	144		43.508270
25		66.221595	145		43.245044
26		66.136905	146		42.980416

No. of Rental Payment	Payment Date	% of Total Aggregate Rentals (*)	No. of Rental Payment	Payment Date	% of Total Aggregate Rentals (*)
27		66.048957	147		42.716200
28		65.960593	148		42.450380
29		65.867472	149		42.183108
30		65.772287	150		41.915610
31		65.676638	151		41.646485
32		65.576183	152		41.375887
33		65.473614	153		41.105038
34		65.370531	154		40.832541
35		65.262591	155		40.558548
36		65.152488	156		40.284281
37		65.041819	157		40.008343
38		64.925446	158		39.731056
39		64.806997	159		39.454096
40		64.687927	160		39.175445
41		64.565026	161		38.895356
42		64.440721	162		38.614953
43		64.315756	163		38.332836
44		64.186919	164		38.049256
45		64.056638	165		37.765340
46		63.925656	166		37.479685
47		63.790762	167		37.192545
48		63.654383	168		36.905043
49		63.517262	169		36.615779
50		63.375593	170		36.325224
51		63.232673	171		36.034906
52		63.088967	172		35.742808
53		62.942094	173		35.449283
54		62.794270	174		35.155353
55		62.645627	175		34.859619
56		62.493784	176		34.562434
57		62.340955	177		34.264819
58		62.187274	178		33.965374
59		62.030357	179		33.664454
60		61.872422	180		33.363078
61		61.713598	181		33.059848
62		61.550614	182		32.755386
63		61.386509	183		32.451067
64		61.221475	184		32.144873
65		61.053295	185		31.837266
66		60.884019	186		31.529159
67		60.713780	187		31.219151
68		60.540359	188		30.907705
69		60.365808	189		30.595732
70		60.190257	190		30.281834
71		60.011488	191		29.966469
72		59.831553	192		29.650552
73		59.650581	193		29.332682
74		59.465545	194		29.013644
75		59.279238	195		28.694650

No. of Rental Payment	Payment Date	% of Total Aggregate Rentals (*)	No. of Rental Payment	Payment Date	% of Total Aggregate Rentals (*)
76		59.091852	196		28.373682
77		58.901340	197		28.051314
78		58.709583	198		27.728347
79		58.516711	199		27.403379
80		58.320675	200		27.076984
81		58.123357	201		26.749963
82		57.924885	202		26.420914
83		57.723212	203		26.090410
84		57.520218	204		25.759252
85		57.316032	205		25.426038
86		57.109194	206		25.091720
87		56.902218	207		24.757344
88		56.694025	208		24.420891
89		56.484058	209		24.083052
90		56.273994	210		23.744509
91		56.062692	211		23.403860
92		55.849595	212		23.061798
93		55.636380	213		22.719003
94		55.421905	214		22.374074
95		55.205614	215		22.027702
96		54.989183	216		21.680568
97		54.771470	217		21.331271
98		54.552037	218		20.980939
99		54.333207	219		20.630441
100		54.113078	220		20.277756
101		53.891457	221		19.923701
102		53.669916	222		19.568832
103		53.447058	223		19.211748
104		53.222689	224		18.853263
105		52.998382	225		18.493935
106		52.772739	226		18.132361
107		52.545566	227		17.769357
108		52.318435	228		17.405479
109		52.089951	229		17.039324
110		51.859915	230		16.672207
111		51.630524	231		16.304809
112		51.399765	232		15.935112
113		51.167522	233		15.564059
114		50.935288	234		15.192079
115		50.701666	235		14.817767
116		50.466541	236		14.442069
117		50.231405	237		14.065412
118		49.994861	238		13.686393
119		49.756795	239		13.305955
120		49.518699	END OF LEASE		12.924526

No. of Rental Payment	Payment Date	% of Total Aggregate Rentals (*)	No. of Rental Payment	Payment Date	% of Total Aggregate Rentals (*)
-----	-----	-----	-----	-----	-----

(*) Does not include any rent payment or other amount then due.

Initialed:

JH
(Lessee)

MORRISON KNUDSEN CORPORATION**CERTIFIED COPY OF RESOLUTION**

"RESOLVED, that the Company hereby authorizes the execution and delivery of parent company guarantees, on such forms and pursuant to such terms as the Company may agree, guaranteeing the prompt repayment of financial accommodations extended by banks to the Company's subsidiary corporations, up to \$50 million for any one guarantee.

"RESOLVED FURTHER, that the officers who are authorized to execute and deliver such guarantees on behalf of the Company and the limit of such guarantees are as follows:

1. Up to \$50 million:

the Chairman and Chief Executive Officer, or
the President and Chief Operating Officer,

when acting jointly with either

the Senior Vice President and Chief Financial Officer, or
the Treasurer.

2. Up to \$2 million:

any combination of two of the officers identified above."

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Stephen Hanks
Exec VP

I, David A. Channer, do hereby certify that I am the Assistant Secretary of Morrison Knudsen Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware. I do further certify that the foregoing is a true, full and correct copy of a resolution duly adopted by written consent of the Executive Committee of the Board of Directors of said corporation at its offices in Boise, Idaho, as of September 15, 1993.

I do further certify that said resolution has been spread on the minutes of the Board of Directors of said corporation, has not been altered, amended, or repealed, and is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of said corporation this 29th day of March, 1994.

MORRISON KNUDSEN CORPORATION

Assistant Secretary

Subscribed and sworn to before me, this 29th day of March, 1994.

Notary Public

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CONTINUING GUARANTY OF PAYMENT

THIS GUARANTY ("Guaranty") is made and entered into as of the 30th day of March, 1994 by Morrison Knudsen Corporation, 720 Park Boulevard, Boise, Idaho 83729 (hereinafter, referred to as "Guarantor"). In favor of Caterpillar Financial Services Corporation, 3322 West End Avenue, Nashville, Tennessee 37203-0983 (hereinafter referred to as "Caterpillar Financial"), guaranteeing the indebtedness (as hereinafter defined) of MK Rail Corporation (hereinafter referred to as "Obligor").

WITNESSETH:

FOR VALUE RECEIVED, and/or as an inducement to Caterpillar Financial to now or hereafter enter into, purchase or otherwise acquire any agreements, accounts and/or other obligations evidencing and/or securing Obligor's indebtedness and in consideration of and for credit and financial accommodations now or hereafter extended to or for the account of the Obligor (which includes Caterpillar Financial's consent to an assignment and/or assumption of the indebtedness), which is in the best interest of Guarantor and which would not have been extended but for this Guaranty, the Guarantor agrees as follows:

SECTION 1. Guaranty of Obligor's Indebtedness. Guarantor hereby absolutely, irrevocably and unconditionally agrees to, and by these presents does hereby: (a) guarantee the prompt and punctual payment, performance and satisfaction of all present and future indebtedness and obligations of Obligor to Caterpillar Financial which Obligor now owes Caterpillar Financial or which Obligor shall at any time or from time to time hereafter owe Caterpillar Financial when the same shall become due in connection with or arising out of those certain Railroad Equipment Lease Agreements by and between Obligor and Caterpillar Financial covering two (2) Model MK1200C and three (3) Model MK5000C locomotives dated on or about March 30, 1994, including any and all existing and future additional schedules, amendments and/or related agreements thereto (collectively, the "Contract"), whether direct or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended, or by open account or otherwise, and whether representing rental, principal, interest and/or late charges or other charges of an original balance, an accelerated balance, a balance reduced by part payment or a deficiency after sale of collateral or otherwise and (b) undertake and guarantee to pay on demand and indemnify Caterpillar Financial against all liabilities, losses, costs, reasonable attorney's fees, and reasonable expenses which may be suffered by Caterpillar Financial by reason of Obligor's default or default of the Guarantor (with all of Obligor's indebtedness and/or obligations as stated above (including all costs, fees and expenses) being hereinafter individually and collectively referred to under this Guaranty as Obligor's "Indebtedness", which Indebtedness shall be conclusively presumed to have been created in reliance upon this Guaranty).

SECTION 2. Joint, Several and Solidary Liability. Guarantor further agrees that its obligations and liabilities for the prompt and punctual payment, performance and satisfaction of Obligor's Indebtedness are independent of any agreement or transaction with any third parties and shall be on a "joint and several" and "solidary" basis along with Obligor to the same degree and extent as if Guarantor had been and/or will be a co-borrower, co-principal obligor and/or co-maker of Obligor's Indebtedness. In the event that there is more than one guarantor under this Guaranty, or in the event that there are other guarantors, endorsers, sureties or any other party who may at any time become liable for all or any portion of Obligor's Indebtedness (each, an "Other Obligor"), the provisions hereof shall be read with all grammatical changes thereby rendered necessary and each reference to the Guarantor shall include each and every one of those parties liable for all or any portion of Obligor's Indebtedness and each Guarantor's obligations and liabilities hereunder shall be on a "joint and several" and "solidary" basis along with such Other Obligor.

SECTION 3. Duration; Cancellation of Guaranty. This Guaranty and Guarantor's obligations and liabilities hereunder shall remain in full force and effect until such time as Obligor's Indebtedness shall be fully and finally paid, performed and/or satisfied, until such time as this Guaranty may be cancelled by Caterpillar Financial under a written cancellation instrument in favor of Guarantor (subject to the automatic reinstatement provisions set forth hereinbelow) or otherwise as stated herein.

SECTION 4. Default by Obligor. Immediately upon Obligor's default under any of its Indebtedness in favor of Caterpillar Financial, Caterpillar Financial may make demand upon Guarantor and within five (5) business days of receipt of such notice, Guarantor unconditionally and absolutely agrees to then pay immediately the full then unpaid amount of all of Obligor's Indebtedness (whether at stated maturity, by required prepayment, declaration, acceleration or otherwise) and/or perform any covenant or agreement hereunder guaranteed.

SECTION 5. Additional Covenants. Guarantor further agrees that Caterpillar Financial may, at its sole option, at any time, and from time to time, without the consent of or notice to Guarantor, or to any other party, and without incurring any responsibility to Guarantor or to any other party, and without effecting, impairing or releasing the obligations of Guarantor under this Guaranty: (a) discharge or release any party (including, but not limited to, Obligor, secondary obligors of Obligor's indebtedness or any co-guarantor under this Guaranty) who is or may be liable to Caterpillar Financial for Obligor's Indebtedness; (b) sell at public or private sale, exchange, release, impair, surrender, substitute, realize upon or otherwise deal with, in any manner and in any order and upon such terms and conditions as Caterpillar Financial deems best at its reasonable discretion, any leased equipment and/or any collateral now or hereafter directly or indirectly securing repayment of Obligor's Indebtedness (all such leased equipment and/or all such collateral shall hereinafter be referred to as the "Equipment"), including without limitation, the purchase of all or any part of such collateral for Caterpillar Financial's own account; (c) change the manner, place or terms of payment and/or available credit (including without limitation increase or decrease in the amount of such payments, available credit or any interest rate adjustments), or change or extend the time of payment of or renew, as often and for such periods as Caterpillar Financial may determine, or alter Obligor's Indebtedness or grant any other indulgence to Obligor and/or any secondary obligors of Obligor's Indebtedness or any co-guarantor under this Guaranty; (d) settle or compromise Obligor's Indebtedness with Obligor and/or any third party or refuse any offer of performance with respect to, or substitutions for, the Indebtedness; (e) subordinate and/or agree to subordinate the payment of all or any part of Obligor's Indebtedness or Caterpillar Financial's rights in and/or to any Equipment to the payment and/or rights of any other present and/or future creditors of Obligor; (f) apply all monies received from Obligor or others or from any Equipment to any part of the Indebtedness as Caterpillar Financial so chooses in its sole discretion which shall include without limitation the application of any payments made by Obligor or others and/or proceeds derived from cross-secured collateral to other loans that Obligor may then owe to Caterpillar Financial, without regard to whether Obligor's Indebtedness remains unpaid, unperformed or unsatisfied; (g) take or accept any other security or guaranty for any or all of Obligor's Indebtedness; and/or (h) enter into, deliver, modify, amend or waive compliance with, any instrument, agreement or arrangement evidencing, securing or otherwise effecting, all or any part of Obligor's Indebtedness.

In addition, no course of dealing or course of performance between Caterpillar Financial and Obligor (or any Other Obligor), nor any failure or delay on the part of Caterpillar Financial to exercise any of Caterpillar Financial's rights and remedies, or any other agreement or agreements by and between Caterpillar Financial and Obligor (or any Other Obligor) shall have the effect of stopping, impairing or releasing Guarantor's obligations and liabilities to Caterpillar Financial or of waiving any of Caterpillar Financial's rights and remedies. Any partial exercise of any rights and remedies granted to Caterpillar Financial shall furthermore not constitute a waiver of any of Caterpillar Financial's other rights and remedies, it being Guarantor's intent and agreement that Caterpillar Financial's rights and remedies shall be cumulative in nature. Guarantor further agrees that, should Obligor default under its Indebtedness, any waiver or forbearance on the part of

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Caterpillar Financial to pursue the rights and remedies available to Caterpillar Financial hereunder shall be binding upon Caterpillar Financial only to the extent that Caterpillar Financial specifically agrees to such waiver or forbearance in writing. A waiver or forbearance on the part of Caterpillar Financial as to one event of default shall not constitute a waiver or forbearance as to any other default.

SECTION 6. No Release of Guarantor. Guarantor's obligations and liabilities under this Guaranty shall not be released, impaired, reduced or otherwise affected by, and shall continue in full force and effect, notwithstanding the occurrence of any event, including without limitation any one or more of the following events: (a) death, insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of authority (whether corporate, partnership or trust) of Obligor (or any person acting on Obligor's behalf) or any Other Obligor or any other defense based on or arising out of the lack of validity or unenforceability of the Indebtedness or any agreement or instrument relating thereto or any provisions thereof and/or Obligor's absence or cessation of liability thereunder for any reason, including without limitation, Caterpillar Financial's failure to preserve any right or remedy against Obligor; (b) any change in Obligor's financial condition; (c) partial payment or payments of any amount due and/or outstanding under Obligor's Indebtedness; (d) any change in Obligor's management, ownership, identity or business or organizational structure; (e) any payment by Obligor or any other party to Caterpillar Financial that is held to constitute a preferential transfer or a fraudulent conveyance under any applicable law, or for any reason, Caterpillar Financial is required to find such payment or pay such amount to Obligor or to any other person; (f) any sale, lease or transfer, whether or not commercially reasonable, of all or any part of Obligor's assets and/or any assignment, transfer or delegation of Obligor's Indebtedness to any third party (whereby this Guaranty shall continue to extend to all sums due from or for the account of Obligor and/or the new or substituted legal entity); (g) any failure to perfect any lien or security interest securing the Indebtedness or preserve any right, priority or remedy against any Equipment; (h) any interruption, change or cessation of relations between Guarantor and Obligor; (i) any defect in, damage to, destruction of or loss of or interference with possession or use of any Equipment for any reason by Obligor or any other person; (j) any act or omission by Caterpillar Financial which increases the scope of Guarantor's risk, including without limitation, negligent administration of transactions with Obligor; and/or (k) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing, which might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety or which might otherwise limit recourse against Guarantor.

This Guaranty and Guarantor's obligations and liabilities hereunder shall continue to be effective, and/or shall automatically and retroactively be reinstated if a release, termination or discharge has occurred, as the case may be, if at any time any payment or part thereof to Caterpillar Financial with respect to Obligor's Indebtedness is received or is restored by Caterpillar Financial for any reason (including without limitation pursuant to any insolvency, bankruptcy, reorganization, receivership, or any other debt relief granted to Obligor or to any other party) whether by court order, administrative order or settlement. In the event that Caterpillar Financial must receive or restore any payment received by Caterpillar Financial in satisfaction of any of Obligor's Indebtedness, any prior release, termination or discharge from the terms of this Guaranty shall be without effect, and this Guaranty and Guarantor's obligations and liabilities hereunder shall automatically be renewed or reinstated and shall remain in full force and effect to the same degree and extent as if such a release, termination or discharge never occurred and as if such amount had never been received by Caterpillar Financial, notwithstanding the cancellation of any agreement evidencing Obligor's Indebtedness. It is the intention of Caterpillar Financial and Guarantor that Guarantor's obligations and liabilities hereunder shall not be discharged except by Guarantor's full and complete payment, performance and satisfaction of such obligations and liabilities and then only to the extent thereof.

SECTION 7. Waivers by Guarantor. Guarantor waives, for the benefit of Caterpillar Financial (which waivers shall survive until this Guaranty is released or terminated in writing by Caterpillar Financial): (a) notice of the acceptance of this Guaranty; (b) notice of the existence, creation or incurrence of new and/or additional debt owing from Obligor to Caterpillar Financial; (c) presentment, protest and demand, and notice of protest, demand, nonpayment, nonperformance and dishonor of any and all agreements, notes or other obligations signed, accepted, endorsed or assigned to or by Caterpillar Financial or agreed to between Obligor and Caterpillar Financial; (d) notice of adverse change in Obligor's financial condition or any other fact which might materially increase the risk of Guarantor; (e) any and all rights in and notices or demands relating to any Equipment, including without limitation, all rights, notices, advertisements or demands relating, whether directly or indirectly, to the foreclosure, sale or other disposition of any or all such Equipment or the manner of such sale or other disposition; (f) any claim, right or remedy which Guarantor may now have or hereafter acquire against the Obligor that arises hereunder and/or from the performance by any Other Obligor including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Caterpillar Financial against the Obligor or any security which Caterpillar Financial now has or hereafter acquires with respect to the Obligor, whether or not such claim, right or remedy arises in equity, under contract (express or implied), by statute, under common law or otherwise; (g) notice of any default by Obligor or any other person obligated in any manner for all or any portion of Obligor's Indebtedness and notice of any legal proceedings against such parties; (h) any right of contribution from any Other Obligors; (i) notice and hearing as to any prejudgment remedies; (j) any defense which is premised on an alleged lack of consideration of the obligation undertaken by Guarantor, including without limitation, any defense to the enforcement of this Guaranty based upon the timing of execution of this Guaranty and/or that the Guaranty had been executed after the execution date of any agreements evidencing the Indebtedness; (k) all exceptions and homestead laws; (l) any other demands and notices required by law; (m) all setoffs and counterclaims against Caterpillar Financial and/or Obligor; (n) any defenses based on the claim that Guarantor's liabilities and obligations exceed or are more burdensome than those of Obligor; (o) any defense which the Obligor may assert or be able to assert on the underlying Indebtedness or which may be asserted by Guarantor, including but not limited to (i) breach of warranty, (ii) fraud, (iii) statute of frauds, (iv) infancy, (v) statute of limitations, (vi) lender liability, (vii) accord and satisfaction, (viii) payment and/or (ix) usury.

SECTION 8. Guarantor's Understandings with Respect to Waivers. Guarantor warrants and agrees that each of the waivers, covenants and agreements set forth herein are made with Guarantor's full knowledge of their significance and consequences, and that under the circumstances, the waivers, covenants and agreements are reasonable and not contrary to public policy or law. If any of said waivers, covenants and agreements are determined to be contrary to any applicable law or public policy, such waivers, covenants and agreements shall be effective only to the maximum extent permitted by law.

SECTION 9. Enforcement of Guarantor's Obligations and Liabilities. Guarantor agrees that, should Caterpillar Financial deem it necessary to file an appropriate collection action to enforce Guarantor's obligations and liabilities under this Guaranty, Caterpillar Financial may commence such a civil action against Guarantor without the necessity of first (i) attempting to collect Obligor's Indebtedness from Obligor or from any Other Obligor, whether through filing of suit or otherwise, (ii) attempting to exercise any rights Caterpillar Financial may have against any Equipment, whether through re-lease, the filing of an appropriate foreclosure action or otherwise, (iii) including Obligor or any Other Obligor as an additional party defendant in such a collection action against Guarantor, or (iv) pursuing any other remedy in Caterpillar Financial's power or to mitigate damages. If there is more than one guarantor under this Guaranty, each Guarantor additionally agrees that Caterpillar Financial may file an appropriate collection and/or enforcement action against any one or more of them, without impairing the rights of Caterpillar Financial against any other guarantor under this Guaranty.

SECTION 10. Representations and Warranties by Guarantor. Guarantor represents and warrants to Caterpillar Financial that (i) all actions, authority and consents required to be performed, obtained and/or satisfied prior to the execution and delivery of this Guaranty, and to constitute this Guaranty as the valid and binding obligation of Guarantor in accordance with its terms, have been performed, obtained and satisfied in material compliance with all applicable laws; (ii) Guarantor gives this Guaranty based on an independent investigation of financial and other circumstances by Guarantor and has adequate means to obtain on a continuing basis, information concerning the condition of Obligor, and that Guarantor is not relying on Caterpillar Financial to provide such information, now or in the future; (iii) if acceleration of the time for payment of any Indebtedness is stayed upon the insolvency, bankruptcy or reorganization of Obligor, all such amounts otherwise subject to acceleration under the terms of any agreement between Obligor and Caterpillar Financial shall nonetheless be immediately payable

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by Guarantor in accord with the terms of this Guaranty; (iv) in the event that Guarantor should for any reason whatsoever receive any payment or payments from Obligor (or any Other Obligor) on any amount or amounts that Obligor (or such a third party) may owe to Guarantor (which Guarantor shall receive and/or attempt to obtain should Caterpillar Financial so request in writing). Guarantor agrees to accept such payment or payments for and on behalf of Caterpillar Financial, advising Obligor (or the third party payee) of such a fact, and Guarantor unconditionally agrees to immediately deliver such funds to Caterpillar Financial, with such funds being held by Guarantor during any interim period in trust for Caterpillar Financial without reducing or affecting in any manner the liabilities of Guarantor under the other provisions of this Guaranty; and (v) Guarantor receives a direct or indirect material benefit from the transactions contemplated herein and/or arising from Obligor's indebtedness, even if Guarantor does not receive any property, money or services which are the subject thereof.

SECTION 11. Notice. Any notice provided in this Guaranty must be in writing by first class mail, by facsimile transmission or by registered or certified mail and will be considered as given on the day it is delivered by hand or deposited postage prepaid in the United States mail addressed to the party as set forth herein or in the case of facsimile transmission, when sent by the notifying party.

SECTION 12. Construction. This writing is intended as a final expression of this Guaranty agreement and is a complete and exclusive statement of the terms of that agreement, provided however, that the provisions of this Guaranty shall be in addition to and cumulative of, and not in substitution, novation or discharge of, any and all prior or contemporaneous written guarantees or other written agreements by Guarantor (or any one or more of them), in favor of Caterpillar Financial or assigned to Caterpillar Financial by others, all of which shall be construed as complementing each other. Nothing herein contained shall prevent Caterpillar Financial from enforcing any and all such other guarantees or agreements in accordance with their respective terms.

SECTION 13. Amendment. No amendment, modification, consent or waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless the same shall be in writing signed by a duly authorized officer of Caterpillar Financial, and then shall be effective only to the specific instance and for the specific purpose for which given.

SECTION 14. Successors and Assigns Bound. Guarantor's obligations and liabilities under this Guaranty shall be binding upon Guarantor's successors, heirs, legatees, devisees, administrators, executors and assigns. Caterpillar Financial may assign this Guaranty and any and all rights and interests included herein in Caterpillar Financial's sole discretion without notice to Guarantor and the rights and remedies granted to Caterpillar Financial under this Guaranty shall also inure to the benefit of Caterpillar Financial's successors and assigns, as well as to any and all subsequent holder or holders of any of Obligor's indebtedness subject to this Guaranty, without reassignment, counterclaim, reduction, recoupment, setoff, deduction or defense based on any claim Guarantor may have against Caterpillar Financial, such successors and assigns or subsequent holders of Obligor's indebtedness. Guarantor shall not assign this Guaranty without the prior written consent of Caterpillar Financial.

SECTION 15. Termination. This Guaranty is irrevocable except that any termination of this Guaranty shall be ineffective unless upon the termination date Guarantor deposits with Caterpillar Financial collateral in the form of cash in an amount not less than the amount of the indebtedness outstanding on the termination date. Such cash shall be held by Caterpillar Financial in a separate account and shall be returned to Guarantor upon the full and indefeasible payment of all of the indebtedness.

SECTION 16. Caption Headings. Caption headings of the sections of this Guaranty are for convenience purposes only and are not to be used to interpret or to define their provisions. In this Guaranty, whenever the context so requires, the singular includes the plural and the plural also includes the singular.

SECTION 17. Guarantors Waiver of Jury. This Guaranty shall be construed liberally in favor of Caterpillar Financial and shall be governed and construed in accordance with the substantive laws of the State of Tennessee without regard to the conflicts of laws principles thereof. To induce Caterpillar Financial to accept this Guaranty, all actions or proceedings arising directly or indirectly in connection with, out of, related to or from this Guaranty may be litigated, at Caterpillar Financial's sole discretion and election, in courts within the state of Tennessee. Guarantor consents and submits to the jurisdiction of any local, state or federal court located within that state and agrees that service of the summons and complaint and any other process which may be served in any such action or proceeding may be made by mail. Guarantor waives any right to transfer or change the venue of any litigation brought against Guarantor by Caterpillar Financial in accordance with this paragraph (including without limitation the defense of an inconvenient forum). Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted by law. ANY ACTION, SUIT OR PROCEEDING RELATING DIRECTLY OR INDIRECTLY TO THIS GUARANTY OR THE RELATIONSHIP BETWEEN GUARANTOR AND CATERPILLAR FINANCIAL, WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. AS SUCH, GUARANTOR HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY SUCH ACTION, SUIT OR PROCEEDING. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

SECTION 18. Severability. If any provision of this Guaranty is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, this Guaranty shall be construed and enforceable as if the illegal, invalid or unenforceable provision had never comprised a part of it, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Guaranty, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and legal, valid and enforceable.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty in favor of Caterpillar Financial on the day, month and year first written above.

Guarantor has read and fully understands all of the provisions of this Guaranty.

MORRISON KNUDSEN CORPORATION

Signature: [Signature] / [Signature]
Name (PRINT): William J. Agel / STEPHEN C. HANKS
Title: Chairman, President & CEO / Exec. V.P.

*Print the correct name of individual, corporation or partnership.

**Print title of corporate officer or partner. Print "an individual", if party is individual signing on own behalf.

[Attach appropriate Notary Acknowledgment - See "Notary Acknowledgment" Section]

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Exhibit A

EQUIPMENT LEASE AGREEMENT

Dated as of _____, 19

LESSOR

and

LESSEE

Filed and Recorded with the
Interstate Commerce Commission
on _____, at
_____ and given
Recordation No. _____

EQUIPMENT LEASE AGREEMENT

Lease Agreement made this ____ day of _____, 19__, between _____
("Lessor") with a place of business located at _____,
and _____ ("Lessee") having its principal place of business located at
_____.

1. LEASE AGREEMENT: Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to rent from Lessor all the machinery, equipment and other personal property ("Equipment") described in Equipment Lease Schedule(s) which are or may from time to time be executed by Lessor and Lessee and attached hereto or incorporated herein by reference ("Schedules"), upon the terms and conditions set forth in this Lease, as supplemented by the terms and conditions set forth in the appropriate Schedule identifying such items of Equipment. All of the terms and conditions of this Lease shall govern the rights and obligations of Lessor and Lessee except as specifically modified in writing. Whenever reference is made herein to "this Lease" it shall be deemed to include each of the various Schedules identifying all items of Equipment, all of which constitute one undivided lease of the Equipment, and the terms and conditions of which are incorporated herein by reference.

2. CONDITIONS PRECEDENT: The obligation of Lessor to lease any of the Equipment to Lessee hereunder shall be subject, on or as of the acceptance date for such Equipment, to (i) Lessee's acceptance of such Equipment, as evidenced by Lessor's receipt of an acceptance certificate in form and substance acceptable to Lessor with respect thereto; (ii) Lessee's execution and delivery, at Lessee's expense, of such documents as Lessor may reasonably deem to be necessary or desirable (each in form and substance satisfactory to Lessor), including, without limitation, an opinion of Lessee's counsel, a certificate(s) of officers of Lessee, Uniform Commercial Code financing statements and other filings and publications as may be appropriate with respect to Lessor's interest in the Equipment including filings with the United States Interstate Commerce Commission; (iii) there not having occurred, in Lessor's sole judgement, since _____, any material adverse

change in the financial condition of Lessee or in Lessee's ability to perform its obligations hereunder; (iv) there having occurred no change in applicable law that would have a material adverse impact on the transactions contemplated by this Lease (unless Lessor and Lessee shall have agreed upon appropriate adjustments and indemnities to compensate for such change); (v) Lessee's understanding and agreement that, notwithstanding anything contained in this Lease to the contrary, (a) title to and ownership of the Equipment reside with Caterpillar Financial Services Corporation ("CFSC") pursuant to a Railroad Lease Agreement between CFSC and Lessor dated December 27, 1991 (the "Caterpillar Lease"), and (b) the rights and interests of Lessor and Lessee to and in the Equipment and the rights and remedies of Lessor and Lessee under this Lease are subject and subordinate to the terms and conditions of the Caterpillar Lease; and (vi) Lessee's representations and warranties contained in this Lease being true and accurate as if made on and as of such date, and Lessee's having performed and complied with all of its covenants and obligations hereunder and under any purchase agreement. Lessee's execution of any Schedule shall constitute its representation and warranty that there has been no material adverse change in its business or financial condition since the date referenced above in this Section 2.

3. **TERM:** The obligations under this Lease shall commence upon the written acceptance thereof by Lessor and shall end upon full performance and observance of each and every term, condition and covenant set forth in this Lease, each Schedule hereto and any extensions thereof. The rental term of the Equipment listed in each Schedule shall commence on the date that the first Rental Payment is due and shall terminate on the last day of the term stated in such Schedule unless such Schedule has been extended or otherwise modified in writing and signed by the Lessor and Lessee. Lessor, at its option, may terminate any Schedule as to which the Equipment listed therein has not been delivered to Lessee prior to the outside commitment date specified in such Schedule.

4. **RENTAL PAYMENTS:** The rent for the Equipment described in each Schedule shall be due and payable on the dates set forth therein. Such rent shall be payable at the office of Lessor, or at such office as Lessor may otherwise designate. The receipt of any check or other item on account of any Rental Payment will not be considered as payment thereof until such check or other item is honored when presented for payment.

5. DELIVERY AND INSTALLATION: Lessee, at its expense, will pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment.

(a) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THE UNITS, INCLUDING, (i) ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY, OR CONDITION OF THE UNITS, OR (ii) THE MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR (iii) WITH RESPECT TO INFRINGEMENT, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ALL UNITS LEASED TO AND ACCEPTED BY LESSEE UNDER THIS AGREEMENT ARE LEASED ON AN "AS IS" BASIS.

(b) Lessor shall not be responsible to Lessee in contract or in tort (including negligence), under any theory of strict liability, or otherwise, for loss of profits or revenues or for any special, incidental, consequential or punitive loss or damage of any nature arising at any time out of this Agreement. The provisions of this Section 5 shall not be constructed to and shall not apply to modify or negate any specific remedy afforded Lessee under the express terms of this Agreement.

(c) Lessee confirms that it has selected the Equipment on the basis of its own judgment, and expressly disclaims reliance upon any statements, representations, or warranties made by Lessor, except as expressly stated in this Agreement.

6. TITLE TO AND LOCATION OF EQUIPMENT: Title to each item of Equipment leased hereunder shall remain with CFSC at all times and the Lessee shall have no right, title or interest therein except as expressly set forth in this Lease. Lessee, at its expense, will protect and defend CFSC's title to the Equipment and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes except for those created by, through, or under CFSC. Lessor assumes no liability and makes no representation as to the treatment by Lessee of this Lease, the Equipment or the Rental

Payments for financial statement or tax purposes.

All items of Equipment shall at all times be and remain personal property. The Equipment shall be delivered to the location specified in the Schedule with respect thereto.

CFSC and the Lessor shall be permitted to display notice of ownership of the Equipment by affixing to each item of Equipment an identifying stencil or plate or any other indicia of ownership and Lessee will not alter, deface, cover or remove such ownership identification.

7. USE OF EQUIPMENT, INSPECTION AND REPORTS: Lessee may possess and use the equipment in accordance with this lease, provided that any such use is in conformity with all applicable laws, any insurance policies, and any warranties of the manufacturer with respect to the Equipment. Lessor shall have the right, upon reasonable prior notice to the Lessee and during the Lessee's regular business hours, to inspect the Equipment at the premises of the Lessee or to the extent reasonable wherever the Equipment may be located. Lessee shall promptly notify Lessor of all details arising out of any alleged encumbrances on the Equipment or any accident which may result in a claim against the Lessor allegedly resulting from the use or operation thereof. The Lessee will make available (or will cause to be made available) to the Lessor such information as the Lessor shall request from time to time in order to enable the Lessor to fulfill its Federal, state, local and foreign tax return obligations and shall furnish for inspection and copying such original records or copies of available records necessary to satisfy tax audit requirements and to conduct effectively any tax contest.

8. OPERATING RULES AND REGULATIONS: Lessee agrees to comply with all local, state and Federal governmental laws, regulations and requirements relating to the operation and/or use of the Equipment, including the Interchange Rules and all other rules of the Association of American Railroads and the Federal Railroad Administration (or any successor(s) thereto), and the Interstate Commerce Commission. In case any equipment or appliance on any Equipment shall be required to be changed or replaced, or any additional or other equipment or appliance is required to be installed on such Equipment in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such

changes, additions and replacements at its own expense and title thereto shall be immediately vested in Lessor.

9. **FURTHER ASSURANCES:** Lessee shall execute and deliver to Lessor upon Lessor's request such instruments and assurances as Lessor in the reasonable exercise of its discretion deems necessary for the confirmation or perfection of this Lease and Lessor's rights hereunder. In furtherance thereof, Lessor may file or record this Lease or a financing statement with respect thereto so as to give notice to any interested parties. The Lessor is authorized to file a financing statement concerning the Equipment signed only by the Lessor in accordance with the Uniform Commercial Code or one signed by Lessor as Lessee's attorney in fact. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessor, at Lessee's expense, will cause this Lease to be filed in accordance with 49 U.S.C. Section 11303 (a) with the Interstate Commerce Commission.

10. **RISKS OF LOSS:** All risk of loss, damage, theft or destruction to each item of Equipment shall be borne by the Lessee. No such loss, damage, theft or destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee under this Lease all of which shall continue in full force and effect and Lessee, at Lessor's option shall either (a) place the affected Equipment in good repair, condition and working order or (b) pay the Lessor the amount covering such affected Equipment set forth in Addendum "A" - Stipulated Loss Values plus all other amounts then due and payable, less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss, damage, theft or destruction. After compliance with the foregoing to Lessor's satisfaction and provided Lessee is not in default under this Lease, Lessee shall be subrogated to Lessor's rights with respect to any insurance policies or claims for reimbursement by others with respect to such loss, damage, theft or destruction.

11. **INSURANCE:**

a. General Liability and Property Damage Insurance. Lessee represents and warrants that it will maintain in effect at its own expense (i) comprehensive general liability

insurance, including death, bodily injury and property damage, in an amount not less than \$5,000,000 combined single limit coverage in the aggregate and (ii) such other property damage, insurance (exclusive of manufacturer's product liability insurance) with respect to the Equipment as is of the type and in the amount as specified in each Schedule. All insurance provided for in this Section shall be effected with insurance companies satisfactory to Lessor and similar to those insurers who customarily provide public liability insurance to Lessee's industry.

b. Insurance Against Loss or Damage to Equipment. Lessee represents and warrants that it will provide all-risk insurance covering the Equipment including fire and explosion, and lightning and electrical damage, provided that such insurance shall at all times while the Equipment is subject to this Lease be in an amount which, when paid, will be not less than the Stipulated Loss Value of the Equipment from time to time.

c. Lessor as Additional Insurance; Notice. Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies shall name Lessor, as owner of the Equipment, as additional insured thereunder, and, with respect to insurance carried in accordance with paragraph (b), said policies shall be made payable to Lessor as loss payee. Lessee shall furnish certificates to Lessor as proof of such insurance and shall provide for at least thirty (30) days written notice of cancellation to Lessor.

12. **EXPENSES, FEES AND TAXES;** In addition to the Rental Payments, Lessee shall pay promptly when due, all costs, expenses fees, charges and taxes (including sales, use, excise, personal property, ad valorem, documentary stamp and other taxes) incurred in connection with the licensing, registration, use, rental, shipment, transportation, delivery, or operation of the Equipment, and on or relating to this Lease and any Schedule. In case any report or return is required to be filed with respect to any taxes, Lessee will, to the extent legally permissible, file such report or return or notify Lessor in writing to the extent Lessor must file such report or return in sufficient time for Lessor to make such filing of the required report or return. To the extent reasonably requested by Lessor, Lessee will promptly supply Lessor a copy of such reports or returns. Lessee shall promptly reimburse

Lessor for any taxes charged to or assessed against Lessor, except for state or federal net income taxes or franchise taxes other than franchise taxes on gross revenues.

If Lessee should fail to pay any of the costs, expenses, fees, charges and taxes for which Lessee is liable hereunder, Lessor may, but shall not be required to, pay the same for the account of Lessee. Lessee shall reimburse Lessor, upon demand, as additional rental hereunder, for the full amount of any costs, expenses, taxes or other charges paid by Lessor which constitute an obligation of Lessee hereunder.

13. LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS: If Lessee shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Equipment, Lessor may (at its option) perform any act or make any payment which Lessor deems necessary for the maintenance and preservation of the Equipment and Lessor's interest therein, including payments for satisfaction of liens, repairs, taxes, levies and insurance and all sums so paid or incurred by Lessor, together with interest as provided below, and any reasonable legal fees incurred by Lessor in connection therewith shall be additional rent under this Lease and payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of the Lessee.

14. LATE CHARGES: Should Lessee fail to duly pay any part of any Rental Payment or other sum to be paid to Lessor under this Lease, then Lessee shall pay interest on such delinquent payment from the due date until paid at a per annum rate of 2% plus the Bank of America Prime Rate, said interest rate not to exceed the highest legal contract rate of interest.

15. INDEMNIFICATION: Lessee assumes liability for, and hereby agrees to indemnify, protect and keep harmless CFSC and Lessor, their agents, employees, officers, directors, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by

Lessee or Lessor), operation, ownership, selection, delivery, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to perform or comply with any conditions of this Lease. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Lease. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor.

16. NO OFFSET: This Lease is a net lease and all Rental Payments shall be paid when due by Lessee irrespective of any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, the supplier of the Equipment, or any other party.

17. ASSIGNMENT BY LESSEE: Without Lessor's prior written consent and the consent of CFSC, Lessee may not, by operation of law or otherwise, (a) assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest therein or (b) sublet or lend the Equipment or permit same to be used by anyone other than Lessee or Lessee's employees. Irrespective of any permitted sublease, Lessee agrees to remain primarily liable to Lessor under all terms and conditions of this Lease.

Upon the receipt by Lessee of written notice from CFSC that Lessor is in default under the terms and conditions of the Caterpillar Lease, Lessee shall make all future payments due under this Lease directly to CFSC.

18. ASSIGNMENT BY LESSOR; Lessee agrees (a) that Lessor may assign, sell or encumber all or any other part of this Lease and the Rental Payments hereunder and (b) in the event of any such assignment of Rental Payments hereunder and written notice thereof to Lessee, to unconditionally pay directly to any such assignee all rentals and other sums due or to become due under this Lease. THE RIGHTS OF ANY SUCH ASSIGNEE SHALL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SET OFF WHICH LESSEE MAY HAVE AGAINST THE LESSOR.

19. MAINTENANCE, REPAIRS AND RETURN OF EQUIPMENT: Lessee shall, at no expense to Lessor, maintain the Equipment in good repair and operating condition so that the Equipment shall at all times comply with the applicable interchange standards set for such Equipment by the Association of American Railroads ("AAR") and the Federal Railroad Association ("FRA"), and be and remain in good operating order by industry standards and fit for the purposes for which the Equipment was designed. In any event, the Equipment shall at all times satisfy the tests described below.

(a) All damaged or broken parts will be repaired according to AAR and FRA specifications;

(b) Lessee shall maintain and keep the units clean and in serviceable condition at its own expense, using EMD-approved parts, supplies and lubricants or their equivalent, and in accordance with all applicable industry procedures and standards. Lessee agrees to keep Units in at least as good condition as any of Lessee's own SD-40 locomotives.

(c) The Equipment will conform to United States Department of Transportation regulations or those of any other government agency having jurisdiction over the use and operation of the Equipment;

(d) Upon termination of this Lease, a joint inspection will be performed by Lessor and Lessee. Lessee will return the Units, at its cost to any point on the rail system of Lessee as mutually agreed to by Lessee or Lessor. Lessee agrees that each Unit will be returned to Lessor in as good condition as when delivered hereunder, reasonable wear and tear excepted, and clean and in good order and proper repair and free of defects as defined by FRA and determined by said joint inspection. Lessee will make the units available for inspection on or before the date of termination of the lease, and the joint inspection will occur within ten (10) days after notice from Lessee to Lessor of the date and place of such availability. Once the Units have been inspected and repaired to the satisfaction of both parties, the Lessee will be absolved from any further repair costs, the Lease Term shall end and rentals will cease to accrue. Failure of any kind resulting from abuse, neglect or improper repairs during the term of the Agreement is the sole responsibility of the Lessee.

Once the Units have been inspected and accepted by Lessor, Lessee will not be responsible for any future liability relating to its maintenance hereunder. The lease of any Unit does not expire until, within five (5) days after notice from lessee to Lessor of the date and place of availability, such Unit is returned to, and accepted by, the Lessor in good order and condition, as defined above, and all rentals hereunder shall continue to accrue until such time.

(e) Lessee will permit Lessor to store any of the Units on Lessee's tracks for a period of not longer than ninety (90) days following termination of the Agreement with respect to the Units affected. Storage on Lessee's lines will be free of charge to Lessor and at Lessee's risk. All costs associated with preparing the Units for storage following termination of this Lease will be borne by the Lessor. While in storage, Lessee shall permit representatives of Lessor and any entity having authority from Lessor to enter upon Lessee's property, at their sole risk, and inspect the Units. Lessor will indemnify, hold harmless and defend Lessee from any and all Claims which arise as a result or consequence of Lessor's right of access to Lessee's property, including any Claims which are the result of Lessee's negligence.

(f) During the term of this Agreement, representatives of Lessor and any entity having authority from Lessor may on reasonable advance notice to Lessee and at their sole risk and expense, inspect any of the Units and records maintained by Lessee relating to the Units for the purpose of determining the condition of and maintenance of the Units and Lessee's compliance with this Agreement. Lessor will indemnify, hold harmless and defend Lessee from any and all Claims which arise as a result or consequence of Lessor's right of access to Lessee' property, including any Claims which are the result of Lessee's negligence.

20. EVENTS OF DEFAULT: Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Events of Default"):

(a) Default by Lessee in payment of any installment of rent or any other indebtedness or obligation now or hereafter owed by Lessee to Lessor under this Lease or otherwise and the

continuance of such default for ten (10) consecutive days; or (b) default in the performance of any other obligation, covenant or liability contained in this Lease or any other agreement or document with Lessor, and the continuance of such default for ten (10) consecutive days after written notice thereof by Lessor to Lessee; or (c) any material warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false in any material respect when made or furnished; or (d) loss, theft, damage, destruction, or the attempted sale or encumbrance by Lessee of any of the Equipment, or the making of any levy, seizure or attachment thereof or thereon; or (e) dissolution, termination of existence, discontinuance of its business, insolvency, business failure, or appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by Lessee or the commencement of any proceedings under any voluntary bankruptcy, reorganization or arrangement laws by or against Lessee; or (f) the institution of any involuntary bankruptcy proceedings against Lessee or the appointment of a receiver without Lessee' consent, and such proceedings or appointment continues and is ongoing for a period of sixty (60) days; or (g) Lessee shall default in the performance of any covenant contained in Section 34 (a) hereof.

21. REMEDIES OF LESSOR: Upon the occurrence of any Event of Default and at any time thereafter (subject to any applicable grace provisions), Lessor may without any further notice exercise one or more of the following remedies as Lessor in its sole discretion shall elect: (a) declare all unpaid rentals due under this Lease, together with per diem rent from the date of the last regular rental installment to the date of such declaration, to be immediately due and payable; (b) terminate this Lease as to any or all items of Equipment; (c) take possession of the Equipment wherever found without any liability or suit, action or other proceeding by the Lessee and remove the same; (d) cause Lessee at its expense to promptly return the Equipment to Lessor and in the condition set forth in Section 22; (e) use, hold, lease or otherwise dispose of the Equipment or any item thereof without affecting the obligations of Lessee as provided in this Lease; (f) lease the Equipment at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee; (g) proceed by appropriate action either by law or in equity to

enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; (h) exercise any and all rights accruing to a Lessor under any applicable law upon a default by a Lessee. After default at the request of Lessor and to the extent requested by Lessor, Lessee shall comply with the provisions of Section 22 of this Lease. Lessor may, but shall not be required to, lease, otherwise dispose of or keep idle all or part of the Equipment; and Lessor may use Lessee's premises for any or all of the foregoing without liability for rent, costs, damages or otherwise. The proceeds of lease, or other disposition, if any, shall be applied (1) to all Lessor's costs, charges and expenses incurred in enforcing this Lease and in taking, removing, holding, repairing and leasing or otherwise disposing of Equipment; then, (2) to the extent not previously paid by Lessee, to pay Lessor all other sums, including any unpaid rent and any indemnification then remaining unpaid thereon; then (3) to reimburse to Lessee any amounts previously paid directly by Lessee to Lessor as liquidated damages; (4) any surplus shall be retained by Lessor; Lessee shall pay any deficiency in (1) and (2) forthwith. In no event shall Lessor be obligated to lease or otherwise dispose of any item of repossessed Equipment. None of the remedies under this Lease are intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor in law or in equity. Any repossession or subsequent lease by Lessor of any item of Equipment shall not bar an action for a deficiency as herein provided, and the bringing of an action or the entry of judgment against the Lessee shall not bar the Lessor's right to repossess any or all items of Equipment.

22. SEVERABILITY: Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition and unenforceable without invalidating the remaining provisions hereof. To the extent permitted by applicable law, Lessee hereby waives any provision of law which prohibits or renders unenforceable any provisions hereof in any respect.

23. NOTICES: Any notice or other communication given under this Lease shall be sent to the following addresses or to such other address as either of the parties hereto may designate in writing to the other from time to time:

LESSOR:

LESSEE:

Morrison Knudsen Corporation
Rail Systems Group
P.O. Box 73
Boise, ID 83729
Attn: Vice President Finance

Any such notice or other communication shall, if not actually delivered prior thereto, be deemed to have been delivered three (3) business days after the date when it shall have been mailed by registered or certified mail, all charges prepaid.

24. AMENDMENTS AND WAIVERS: This instrument and the Schedules executed by Lessor and Lessee constitute the entire agreement between Lessor and Lessee with respect to the Equipment and the subject matter of this Lease: No term or provision of this Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee, except that Lessor may insert the serial number of any item of Equipment on the appropriate Schedule after delivery thereof. No express or implied waiver by Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default whether similar in kind or otherwise.

25. CONSTRUCTION: This Lease shall in all respects be governed by and construed in accordance with the laws of the State of Idaho. The titles of the sections of this Lease are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Lease in each of its provisions.

26. PARTIES: The provisions of this Lease shall be binding upon, and inure to the benefit of, the assigns, representatives and successors of the Lessor and Lessee. If there is more than one Lessee named in this Lease, the liability of each shall be joint and several.

27. LESSEE'S QUIET ENJOYMENT: So long as Lessee shall pay and perform all of its obligations and covenants hereunder, Lessor shall not disturb its quiet enjoyment and use of the Equipment for its intended purposes. By acceptance of any assignment of this Lease, any assignee hereof agrees, with and for the benefit of Lessee, that as long as Lessee shall perform all of its obligations and covenants hereunder, Lessee's quiet enjoyment and use of the Equipment for its intended purposes shall not be disturbed by such assignee or any party lawfully claiming by, through or under such assignee.

28. TAX INDEMNITY: CFSC as the owner of the Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1986, as amended to the date hereof (hereafter called the Code), to an owner of property, including, without limitation, depreciation deductions with respect to the Equipment, in accordance with Section 168(a) of the Code, based upon the applicable depreciation method and recovery period specified in Sections 168 (b) and (c) of the Code (as indicated below) and, for state income tax purposes, all analogous deductions, with respect to the Equipment.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any return or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee acknowledges that the lease payment rate provided herein has been calculated on the basis of depreciation deductions using an estimated useful life for this Equipment of seven (7) years, ADR Code 40.1, and using a mid-year convention in accordance with Section 168(c) of the Code.

29. REPRESENTATIONS AND WARRANTIES OF LESSEE: Lessee hereby represents, warrants and covenants that, with respect to this Lease and any related documents: (a) the execution, delivery and performance thereof by Lessee have been duly authorized by all necessary corporation action; (b) the individual executing such documents

is duly authorized to do so; (c) the Lease and any related documents constitute legal, valid and binding agreements of Lessee enforceable in accordance with their respective terms; (d) Lessee need not obtain the consent or approval of any party in order to enter into this Lease or to perform Lessee's obligations hereunder; (e) Lessee is in good standing in the state of its incorporation and is qualified to do business in each state where it is necessary to be so qualified; (f) any and all financial statements or other information with respect to the Lessee supplied to Lessor in connection with this Lease and the transactions contemplated hereby are true and complete.

30. SPECIAL COVENANTS: (a) Lessee will not (i) enter into any transaction of merger or consolidation or any commitment with respect thereto; (ii) liquidate or dissolve; (iii) sell, transfer, or otherwise dispose of all or any material portion of its assets; (iv) permit any substantial change in the ownership or control of its capital stock; or (v) change the form of organization of its business.

(b) Lessee will furnish to Lessor (i) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Lessee for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by certified public accountants acceptable to Lessor; (ii) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such quarterly period and a consolidated statement of income of Lessee for such quarterly period and for the portion of the fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Lessee; and (iii) promptly, such additional financial and other information as Lessor may from time to time reasonably request.

LESSEE HEREBY ACKNOWLEDGES RECEIPT OF AN EXECUTED AND TRUE

COPY OF THIS LEASE AND THAT IT IS NON-CANCELABLE FOR THE ORIGINAL RENTAL TERM EXCEPT AS PROVIDED FOR IN SECTION 31 - "EARLY TERMINATION" AS CONTAINED HEREIN.

IN WITNESS WHEREOF, the Lessor and Lessee have each caused this Lease to be duly executed.

LESSOR:

LESSEE:

Morrison Knudsen Corporation

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____